

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

USDC SDNY
DOCUMENT
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CHERYL SANTIAGO,

Petitioner,

– against –

ANTHONY J. ANNUCCI,

Respondent.
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14-CV-03813 (TPG)

MEMORANDUM OPINION
& ORDER

On October 19, 2017, this court issued an Opinion denying Petitioner Cheryl Santiago’s petition for habeas corpus in its entirety. ECF No. 25. Before this court is Santiago’s motion for a certificate of appealability from the October 19 Opinion. ECF No. 30. For the following reasons, the court denies Santiago’s motion and holds that no certificate of appealability shall issue.

When petitioner challenging a state court sentence seeks appeal from an opinion denying habeas relief, the right to appeal is governed by 28 U.S.C. § 2253(c)(1). Under this section, an “appeal may not be taken to the court of appeals from . . . the final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court.” 28 U.S.C. § 2253(c)(1); *see also Slack v. McDaniel*, 529 U.S. 473, 478, 480-81 (2000).

When a district court has made a determination on the merits, a certificate of appealability may issue only “if the applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(1)(2). To make a substantial showing, a petitioner must “sho[w]

that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further.” *Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003) (internal quotations omitted) (quoting *Slack*, 529 U.S. at 484); *see also Slack*, 529 U.S. at 484 (“Where a district court has rejected the constitutional claims on the merits, the showing required to satisfy § 2253(c) is straightforward: The petitioner must demonstrate that reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong.”).

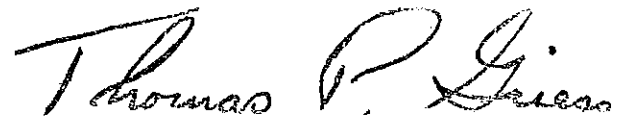
The court finds that Santiago’s sixth amendment claim lacks merit under the standard set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). Santiago has failed to show that her counsel’s performance amounted to ineffective assistance of counsel, and that her conviction would have been any different but for counsel’s errors. Accordingly, Santiago’s motion is denied because she has failed to make a “substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2254(c)(2). No certificate of appealability shall issue.

CONCLUSION

Based on the reasons above, Santiago’s November 16, 2017 motion for a certificate of appealability is denied. This resolves Docket Number 30 in the above-captioned matter.

SO ORDERED

Dated: New York, New York
November 17, 2017

A handwritten signature in black ink, reading "Thomas P. Griesa". The signature is written in a cursive style with a large, stylized "T" and "G".

Thomas P. Griesa
U.S. District Judge